

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DONALD NIXON, on behalf of himself AND
ALL OTHER PERSONS SIMILARLY
SITUATED,

Plaintiffs,

v.

THE RUNNING SPECIALTY GROUP, LLC,

Defendant.

Civil Action No. 1:18-cv-06068-FB-CLP

ANSWER

Defendant The Running Specialty Group, LLC (“JackRabbit”), by its undersigned counsel, Sherin and Lodgen LLP, hereby answer the Class Action Complaint of plaintiff Donald Nixon in this action, dated October 30, 2018 (Dkt. No. 1) (the “Complaint”), as follows:

1. Paragraph 1 is plaintiff’s description of his claims and commentary on the case, therefore no response is required.

2. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the in Paragraph 2.

3. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. To the extent that Paragraph 5 is plaintiff’s description of his claims and commentary on the case, no response is required. JackRabbit denies that its website is not

accessible, denies that it does not offer full and equal access to its website, or its products and services offered in conjunction with its physical locations, and denies the remaining allegations in Paragraph 5.

6. To the extent that Paragraph 6 is plaintiff's description of his claims and commentary on the case, no response is required. JackRabbit denies that its website is not accessible, denies that its corporate policies, practices, and procedures violate the ADA, and denies the remaining allegations in Paragraph 6.

7. Paragraph 7 is a conclusion of law to which no response is required.

8. Paragraph 8 is a conclusion of law to which no response is required.

9. Paragraph 9 is a conclusion of law to which no response is required.

10. To the extent that the allegations in Paragraph 10 are conclusions of law, no response is required. JackRabbit denies that it has violated the ADA, and denies the remaining allegations in Paragraph 10.

11. To the extent that the allegations in Paragraph 11 are conclusions of law, no response is required. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 concerning plaintiff's past conduct or intentions. JackRabbit denies that its website is not accessible and denies the remaining allegations in paragraph 11.

12. Paragraph12 is a conclusion of law to which no response is required.

13. JackRabbit lacks knowledge or information sufficient to form as belief as to the truth of the allegations in Paragraph 13.

14. Admitted.

15. To the extent the allegations in Paragraph 15 concern a written or electronic document or website, such documents or website speak for themselves and no response is required. JackRabbit admits the remaining allegations in Paragraph 15.

16. Admitted.

17. Admitted.

18. To the extent that the allegations in Paragraph 18 concern a written or electronic document or website, such documents or website speak for themselves and no response is required. JackRabbit admits the remaining allegations in Paragraph 18.

19. Paragraph 19 contains conclusions of law to which no response is required. To the extent that Paragraph 19 can be construed as containing allegations of fact, denied.

20. Paragraph 20 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 20. Paragraph 20 also contains conclusions of law to which no response is required.

21. Paragraph 21 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 21. Paragraph 21 also contains conclusions of law to which no response is required.

22. Paragraph 22 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 22. Paragraph 22 also contains conclusions of law to which no response is required.

23. Paragraph 23 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 23. Paragraph 23 also contains conclusions of law to which no response is required.

24. Paragraph 24 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 24. Paragraph 24 also contains conclusions of law to which no response is required.

25. Paragraph 25 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the

remaining allegations in Paragraph 25. Paragraph 25 also contains conclusions of law to which no response is required.

26. Paragraph 26 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 26. Paragraph 26 also contains conclusions of law to which no response is required.

27. Paragraph 27 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 27. Paragraph 27 also contains conclusions of law to which no response is required.

28. Paragraph 28 is plaintiff's description of his claims and commentary on the case, therefore no response is required. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in anyway, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 28. Paragraph 28 also contains conclusions of law to which no response is required.

29. Paragraph 29 is plaintiff's description of his claims and commentary on the case, therefore no response is required.

30. Paragraph 30 is plaintiff's description of his claims and commentary on the case, therefore no response is required. Moreover, JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30.

31. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31.

32. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32.

33. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33.

34. To the extent that the allegations in Paragraph 34 concern a written or electronic document or website, such documents or website speak for themselves and no response is required. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34.

35. To the extent that Paragraph 35 contains conclusions of law, no response is required. To the extent that the allegations in Paragraph 35 concern a written or electronic document or website, such documents or website speak for themselves and no response is required. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35.

36. To the extent that Paragraph 36 contains conclusions of law, no response is required. To the extent that the allegations in Paragraph 36 concern a written or electronic document or website, such documents or website speak for themselves and no response is required. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36.

37. The allegations in Paragraph 37 concern a written or electronic document or website which speak for themselves, therefore no response is required.

38. Denied.

39. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39.

40. JackRabbit denies that its website is inaccessible or that it violated plaintiff's rights in any way. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 concerning plaintiff's visits to, or usage of, the website.

41. JackRabbit denies that its website is inaccessible or that it violated plaintiff's rights in any way. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 concerning plaintiff's visits to, or usage of, the website.

42. Denied.

43. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 concerning plaintiff's past conduct or intentions. JackRabbit denies that its website is inaccessible, denies that there are any access barriers whatsoever to plaintiff's usage of the website, denies that it violated plaintiff's rights in any way, and denies the remaining allegations in Paragraph 43.

44. JackRabbit denies that its website is inaccessible, denies that there are any access barriers whatsoever to plaintiff's usage of the website, denies that it violated plaintiff's rights in any way, and denies the remaining allegations in Paragraph 44.

45. JackRabbit denies that its website is inaccessible, denies that there are any access barriers whatsoever to plaintiff's usage of the website, denies that it violated plaintiff's rights in any way, and denies the remaining allegations in Paragraph 45.

46. JackRabbit denies that its website is inaccessible, denies that there are any access barriers whatsoever to plaintiff's usage of the website, denies that it violated plaintiff's rights in any way, denies that it discriminated against plaintiff or any other individual, and denies the remaining allegations in Paragraph 46.

47. Denied.

48. Paragraph 48 is a conclusion of law to which no response is required.

49. To the extent that Paragraph 49 is plaintiff's description of his claims and the relief he is seeking, no response is required. JackRabbit denies that its website is inaccessible, denies that it lacks a sufficient corporate policy, denies that it violated plaintiff's rights in any way, and denies the remaining allegations in Paragraph 49.

50. JackRabbit denies that its website is inaccessible, denies that it violated the rights of plaintiff or any other purportedly similarly situated individuals in any way, denies that class treatment is appropriate, necessary or warranted in this action, and denies the remaining allegations in Paragraph 50.

51. Denied.

52. The allegations in Paragraph 52 are conclusions of law to which no response is required.

53. Denied.

54. JackRabbit repeats and restates the allegations in Paragraphs 1 to 53 as if fully set forth herein.

55. Paragraph 55 is a conclusion of law to which no response is required.

56. Paragraph 56 contains conclusions of law to which no response is required. To the extent that a response is required, denied.

57. Paragraph 57 is a conclusion of law to which no response is required.

58. Paragraph 58 is a conclusion of law to which no response is required.

59. Paragraph 59 is a conclusion of law to which no response is required.

60. Denied.

61. To the extent that Paragraph 61 is plaintiff's description of his claims and the relief he is seeking, no response is required. JackRabbit denies the remaining allegations in Paragraph 61. Moreover, JackRabbit denies that its website is inaccessible, denies that it violated plaintiff's rights in anyway, denies all allegations of wrongdoing alleged in the Complaint, and denies that plaintiff is entitled to any relief whatsoever.

62. JackRabbit repeats and restates the allegations in Paragraphs 1 to 61 as if fully set forth herein.

63. Paragraph 63 is a conclusion of law to which no response is required.

64. Paragraph 64 contains conclusions of law to which no response is required.

65. Paragraph 65 contains conclusions of law to which no response is required.

66. Denied.

67. Paragraph 67 is a conclusion of law to which no response is required.

68. Paragraph 68 is a conclusion of law to which no response is required.

69. To the extent that the allegations in Paragraph 69 concern a written or electronic documents or website, such documents or website speak for themselves and no response is

required. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 69.

70. Denied. Moreover, JackRabbit denies that class treatment is appropriate, necessary or warranted in this action.

71. Denied.

72. Denied. Moreover, JackRabbit denies that class treatment is appropriate, necessary or warranted in this action.

73. Denied.

74. Denied.

75. Denied.

76. To the extent that Paragraph 76 is a conclusion of law, no response is required. To the extent that Paragraph 76 is plaintiff's description of his claims and the relief sought, no response is required. Moreover, JackRabbit denies that its website is inaccessible, denies that it violated plaintiff's rights in anyway, denies all allegations of wrongdoing alleged in the Complaint, and denies that plaintiff is entitled to any relief whatsoever.

77. JackRabbit repeats and restates the allegations in Paragraphs 1 to 76 as if fully set forth herein.

78. JackRabbit lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78. Moreover, Paragraph 78 concerns a written document which speaks for itself, therefore no response is required.

79. Paragraph 79 is a conclusion of law to which no response is required.

80. Paragraph 80 is a conclusion of law to which no response is required.

81. Paragraph 81 is a conclusion of law to which no response is required.

82. Paragraph 82 is a conclusion of law to which no response is required.

83. Denied.

84. Paragraph 84 is a conclusion of law to which no response is required.

85. Paragraph 85 is a conclusion of law to which no response is required.

86. Denied.

87. Denied. Moreover, JackRabbit denies that class treatment is appropriate, necessary or warranted in this action.

88. To the extent that Paragraph 88 is a conclusion of law, no response is required. To the extent that Paragraph 88 is plaintiff's description of his claims and the relief sought, no response is required. Moreover, JackRabbit denies that its website is inaccessible, denies that it violated plaintiff's rights in anyway, denies all allegations of wrongdoing alleged in the Complaint, and denies that plaintiff is entitled to any relief whatsoever.

89. JackRabbit repeats and restates the allegations in Paragraphs 1 to 88 as if fully set forth herein.

90. Paragraph 90 is a conclusion of law to which no response is required.

91. Paragraph 91 is a conclusion of law to which no response is required.

92. Paragraph 92 is a conclusion of law to which no response is required.

93. Denied.

94. Paragraph 94 is a conclusion of law to which no response is required.

95. Denied. Moreover, JackRabbit denies that class treatment is appropriate, necessary or warranted in this action.

96. Denied.

97. Denied. Moreover, JackRabbit denies that class treatment is appropriate, necessary or warranted in this action.

98. Denied.

99. Denied.

100. Denied.

101. To the extent that Paragraph 101 is a conclusion of law, no response is required. To the extent that Paragraph 101 is plaintiff's description of his claims and the relief sought, no response is required. Moreover, JackRabbit denies that its website is inaccessible, denies that it violated plaintiff's rights in any way, denies all allegations of wrongdoing alleged in the Complaint, and denies that plaintiff is entitled to any relief whatsoever.

102. JackRabbit repeats and restates the allegations in Paragraphs 1 to 101 as if fully set forth herein.

103. Denied.

104. Denied.

PLAINTIFF'S "PRAYER FOR RELIEF"

Plaintiff's "Prayer for Relief" requires no response. Moreover, JackRabbit denies that plaintiff is entitled to any of the relief or remedies set forth therein, and denies that class treatment is appropriate, necessary or warranted in this action.

AFFIRMATIVE DEFENSES

JackRabbit makes the following allegations as affirmative defenses against the claims asserted against it without admitting that it bears the burden of persuasion or presentation of evidence on each or any of these matters, and without waiving the right to assert and rely upon

other defenses that become available or appear during the course of this action, including during discovery.

First Affirmative Defense

The Complaint should be dismissed in its entirety because this Court lacks personal jurisdiction over JackRabbit.

Second Affirmative Defense

The Complaint should be dismissed in its entirety because JackRabbit's website is not subject to the requirements of the Americans With Disabilities Act ("ADA").

Third Affirmative Defense

The Complaint and each count asserted against JackRabbit therein, fails to state a claim, in whole or in part, upon which relief may be granted.

Fourth Affirmative Defense

Any acts allegedly performed by JackRabbit were performed with the good-faith belief that such acts conformed to the applicable provisions of federal, state, and local law. At all relevant times, JackRabbit acted in a manner that was proper, reasonable, and lawful. At no time did JackRabbit act in contravention of any clearly established statutory or constitutional right of the plaintiff of which a reasonable person should have known.

Fifth Affirmative Defense

The Complaint should be dismissed because plaintiff has failed to exhaust applicable state, local, and administrative remedies.

Sixth Affirmative Defense

The Complaint should be dismissed because plaintiff suffered no damages as a result of the allegations in the Complaint.

Seventh Affirmative Defense

Plaintiff waived any right he had to pursue the claims asserted in the Complaint.

Eighth Affirmative Defense

Plaintiff may not pursue a claim under the ADA against JackRabbit because JackRabbit made its website accessible consistent with nondiscriminatory legitimate business reasons, and to the extent it is economically or technologically feasible. JackRabbit made its website available to all site visitors on the same basis and does not treat any subscribers with disabilities differently on the basis of their disability. JackRabbit complies with any and all applicable statutes, regulations, and other laws. To the extent federal agencies are currently promulgating applicable regulations, JackRabbit will fully comply with such regulations when they become effective.

Ninth Affirmative Defense

Plaintiff may not pursue a claim under the ADA against JackRabbit because JackRabbit does not treat disabled and non-disabled individuals disparately. JackRabbit makes its website accessible consistent with non-discriminatory legitimate business reasons and to the extent it is economically or technologically feasible. JackRabbit makes its website available to all site visitors on the same basis and does not treat any site visitor with disabilities differently on the basis of their disability. JackRabbit complies with any and all applicable statutes, regulations, and other laws. To the extent federal agencies are currently promulgating applicable regulations, JackRabbit will fully comply with such regulations when they become effective.

Tenth Affirmative Defense

Plaintiff may not pursue a claim under the ADA against JackRabbit because the accommodation requested would impose an undue burden on JackRabbit. JackRabbit makes

its website accessible consistent with nondiscriminatory legitimate business reasons and to the extent it is economically or technologically feasible. JackRabbit makes its website available to all site visitors on the same basis and does not treat any site visitors with disabilities differently on the basis of their disability. To the extent federal agencies are currently promulgating applicable regulations, JackRabbit will fully comply with such regulations when they become effective.

Eleventh Affirmative Defense

Plaintiff may not pursue a claim under the ADA against JackRabbit because the accommodation requested would impose an undue burden on JackRabbit.

Twelfth Affirmative Defense

Plaintiff may not pursue a claim under the ADA against JackRabbit because – to the extent that the website is not already fully accessible – the relief requested is not readily achievable. JackRabbit makes its website accessible to the extent it is economically or technologically feasible. Requiring JackRabbit to redesign its website immediately to adopt the requirements plaintiff proposes would require JackRabbit to achieve the impossible given current technology, and could significantly reduce the amount, quality, and security of available website options. In addition, adopting plaintiff's proposed requirements could fundamentally alter and weaken security features of JackRabbit's website.

Thirteenth Affirmative Defense

Plaintiff may not pursue any claim against JackRabbit because plaintiff has not suffered any injury caused by JackRabbit.

Fourteenth Affirmative Defense

Plaintiff is not entitled to the injunctive relief sought because it conflicts with federal regulations and legislation. To the extent that the United States Department of Justice is promulgating regulations concerning accessibility of Internet-based content, plaintiff's demand that the Court order JackRabbit to provide unspecified accessibility – regardless of federal regulations – impermissibly circumvents those legislative and regulatory mandates.

Fifteenth Affirmative Defense

Plaintiff is not entitled to the injunctive relief he seeks because plaintiff has adequate remedies at law for the harm he alleges in the Complaint.

Sixteenth Affirmative Defense

Plaintiff is not entitled to the declaratory relief he seeks because it conflicts with federal regulations and legislation. To the extent that the United States Department of Justice is promulgating regulations concerning accessibility of Internet-based content, plaintiff's demand that the Court declare JackRabbit's conduct in violation of federal law improperly ignores those legislative and regulatory mandates.

Seventeenth Affirmative Defense

Plaintiff's claims are precluded by the doctrine of primary jurisdiction. The United States Department of Justice is promulgating regulations concerning accessibility of Internet-based content. The rulemaking lies at the heart of the task assigned to the agency by Congress, will require agency expertise to unravel intricate, technical facts, and would materially aid the Court. Because the merits of plaintiff's claim will be greatly affected by what the Department promulgates, plaintiff's claim cannot be heard until the Department's rulemaking is complete.

Eighteenth Affirmative Defense

Guidelines currently promulgated by the Department of Justice are unconstitutionally vague and lack the formality appropriate for a complex regulatory environment and thereby require JackRabbit to speculate concerning which accessibility criteria its website must meet and thereby violates JackRabbit's due process rights.

Nineteenth Affirmative Defense

Plaintiff's claims are barred to the extent the relief plaintiff requests would impose an undue burden or hardship on JackRabbit by having to choose between compliance with conflicting statutory and regulatory requirements.

Twentieth Affirmative Defense

Plaintiff is not entitled to the declaratory relief he seeks because – to the extent that the website is not already fully accessible – alternative accommodations are available to him for effective access to JackRabbit's website.

Twenty-First Affirmative Defense

Plaintiff's claims are barred to the extent they are rendered moot by JackRabbit's accommodations for the blind and visually impaired, which include, but are not limited to, customer service representatives (available 24 hours a day 7 days a week), and a mobile website that is compatible with screen reader technology.

Twenty-Second Affirmative Defense

Plaintiff is barred from recovering attorney's fees because plaintiff fails to satisfy any standards permitting recovery of attorney's fees.

Twenty-Third Affirmative Defense

Plaintiff has failed to demonstrate that a remedy in equity is warranted, that the grant of injunctive relief would be equitable, or that the balance of hardship tips in his favor.

Twenty-Fourth Affirmative Defense

Plaintiff lacks constitutional standing to pursue any claim against JackRabbit. Plaintiff has not been exposed to JackRabbit's website and therefore has not, and cannot have, suffered a concrete and particularized injury-in-fact resulting from JackRabbit's conduct. Plaintiff also lacks constitutional standing because JackRabbit's customer service telephone number and mobile site are effective and efficient alternate means of providing access to its goods and services for JackRabbit's blind and visually impaired subscribers. Accordingly, Plaintiff has suffered no harm.

Twenty-Fifth Affirmative Defense

Plaintiff lacks statutory standing to pursue any claim against JackRabbit under the standing requirements of the ADA. Plaintiff has not been exposed to JackRabbit's website and therefore has not, and cannot have, experienced – and has no actual notice of – any discrimination resulting from JackRabbit's website. Plaintiff also lacks statutory standing because JackRabbit's customer service telephone number and mobile site are effective and efficient alternate means of providing access to its goods and services for JackRabbit's blind and visually impaired subscribers. Accordingly, Plaintiff has suffered no harm.

Twenty-Sixth Affirmative Defense

Plaintiff is estopped from pursuing the claims asserted in the Complaint.

Twenty-Seventh Affirmative Defense

The Complaint is barred by the doctrine of laches.

Twenty-Eighth Affirmative Defense

To the extent that plaintiff suffered any damages as alleged in the Complaint, which JackRabbit denies, such alleged damages were caused by the action or inaction of plaintiff himself or other persons or entities for which JackRabbit is not responsible.

Twenty-Ninth Affirmative Defense

Plaintiff's claims fail because he failed to mitigate his purported damages, any entitlement to which JackRabbit denies.

Thirtieth Affirmative Defense

This action cannot be maintained as a class action because the allegations, facts and defenses relating to plaintiff and the putative class, separately and individually, will not support a collective or class action.

Thirty-First Affirmative Defense

Plaintiff lacks standing to raise some or all of the claims of the alleged group of persons that plaintiff purports to represent, the existence of which is expressly denied.

Thirty-Second Affirmative Defense

Because liability and/or damages, if any, to each member of the group that plaintiff purports to represent, the existence of which is expressly denied, may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a class action would violate JackRabbit's rights under the Seventh and Fourteenth Amendments to the United States Constitution.

Thirty-Third Affirmative Defense

The Complaint should be dismissed because the claims and relief sought therein are moot.

Thirty-Fourth Affirmative Defense

Plaintiff is not similarly situated to the potential class members he purports to represent, the existence of which is expressly denied, and plaintiff is therefore an inadequate representative of the alleged group of persons that he purports to represent.

Thirty-Fifth Affirmative Defense

The putative class(es) (including subclasses) should not be certified because it/they fail to meet the requirements of Fed. R. Civ. P. Rule 23(a), Fed. R. Civ. P. 23(b), and all state and local laws referenced or relied on by plaintiff.

Thirty-Sixth Affirmative Defense

JackRabbit reserves the right to add any other and further defenses that may become apparent through discovery.

PRAYERS FOR RELIEF

WHEREFORE, The Running Specialty Group, LLC prays that the Court:

- A. Enter judgment in their favor on all counts of plaintiff's Complaint, dismissing plaintiff's Complaint in its entirety with prejudice;
- B. Award it costs and expenses that it has incurred concerning this action;
- C. Award it reasonable attorneys' fees; and
- D. Award it such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: Boston, Massachusetts
December 21, 2018

SHERIN AND LODGEN LLP

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CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the date specified below.

Dated: December 21, 2018

/s/ Matthew C. Moschella